

## **FINAL STATEMENT OF REASONS**

The California Department of Corrections and Rehabilitation (CDCR) proposes to adopt new sections within Article 19 of Subchapter 6 of the California Code of Regulations (CCR), Title 15, Division 3, concerning the parolee reentry court program. Specifically, the following titled sections are being adopted with new text: 3769, 3769.1, 3769.2, 3769.3, 3769.4, 3769.5 and 3769.6.

The purpose of these regulations is to implement on a statewide basis a Reentry Court Program (RCP). The RCP allows the CDCR to refer parolees who have a history of substance abuse or mental illness and who violate their parole conditions to a reentry court. If the court accepts the parolee into the program, the court shall have exclusive jurisdiction to determine conditions of parole, order treatment and rehabilitation services to be provided, determine incentives, order sanctions, lift parole holds, and hear and determine appropriate responses to alleged violations, unless and until the court terminates the parolee's participation in the RCP. The purpose of the RCP is to promote public safety, hold parolees accountable for their behavior and reduce recidivism.

On October 12, 2009, Governor Schwarzenegger signed into law special reform legislation, Senate Bill (SB) X3-18, which became effective January 25, 2010. Included in SB X3-18 was the adoption of Penal Code (PC) section 3015, which provides for the establishment of the reentry court program. This rulemaking action will bring the CDCR into compliance with the provisions of PC Section 3015.

The Legislature and the CDCR have long recognized that the period immediately following incarceration is critical to successful reintegration of an offender into society. It is in the interest of public safety for the state to provide for the supervision and surveillance of parolees, including the judicious use of revocation actions, and to provide educational, vocational, family and personal counseling necessary to assist parolees in the transition between imprisonment and discharge.

As part of the parole supervision process, it has been a long-standing practice of the CDCR to review a parolee's criminal history, adjustment while under parole supervision and the facts and circumstances surrounding any pending alleged violation of parole for the purpose of rendering a decision as to the appropriate disposition for the alleged violation. The RCP is a new, additional disposition of a violation of parole for eligible parolees.

These regulations, proposed by the CDCR's Division of Adult Parole Operations, provide an overview of the program, define program terminology, establish eligibility and exclusionary criteria, make specific the referral process for participation in the program, define parole agent responsibilities, and establish procedures for processing subsequent parole violations.

## **DETERMINATIONS, ASSESSMENTS, MANDATES, AND FISCAL IMPACT:**

The Department has determined that no alternative considered would be more effective in carrying out the purpose of this action or would be as effective, and less burdensome to affected private persons, than the action proposed.

The Department has determined that no reasonable alternatives to the regulations have been identified or brought to the attention of the Department that would lessen any adverse impact on small business.

The Department has made an initial determination that the action will not have a significant adverse economic impact on business. Additionally, there has been no testimony or other evidence provided that would alter the Department's initial determination.

The Department has determined that this action imposes no mandates on local agencies or school districts, or a mandate which requires reimbursement pursuant to Part 7 (Section 17561) of Division 4.

The Department in proposing the adoption of these regulations and has not identified nor has it relied upon any technical, theoretical, or empirical study, report, or similar document.

## **SPECIFIC PURPOSE OF EACH SECTION PER GOVERNMENT CODE 11346.2(b)(1)**

### **Article 19. Parole Violations and Reports.**

**Under Article 19, new Sections 3769, 3769.1, 3769.2, 3769.3, 3769.4 and 3769.5 are adopted.**

### **Section 3769. Parole Reentry Court Program**

**Subsection 3769(a)** establishes the statutory authority for the Reentry Court Program (RCP) as part of the parole reentry accountability program under Penal Code (PC) section 3015. The subsection specifies that the program will operate under an established memorandum of understanding with the Administrative Office of the Court, and provides an overview of the purposes of the program, pursuant to PC section 3015.

**Subsection 3769(b)** provides a partial listing of the rehabilitation and counseling services that may be made available to RCP participants as part of the program. This is necessary so that parolees participating in the program understand both the benefits and requirements of participation. The text specifies that the list is not comprehensive, and additional services may be made available by the reentry court.

**Subsection 3769(c)** provides definitions of program terminology. This is necessary to provide a precise, program-specific definition of potentially vague terms such as "history

of substance abuse” and “history of mental illness.” Additionally, the definitions are needed in order to interpret and make specific terminology such as “Reentry Court” used in the enabling statute.

### **Section 3769.1. Reentry Court Program Eligibility Criteria**

**Subsections 3769.1(a)-(a)(3)** establish program eligibility criteria pursuant to PC section 3015(d). This is necessary in order to make clear, to both potential RCP participants and CDCR staff, which offenders will be eligible for the program.

**Subsection 3769.1(b)** specifies that a parolee who meets the criteria established in subsection 3769.1(a) may be referred by his or her parole agent for participation in the RCP. This makes clear who may refer the offender for participation.

### **Section 3769.2. Reentry Court Program Exclusionary Criteria.**

**Subsections 3769.2(a)-(a)(4)** establishes the criteria that will exclude parolees from participation in the RCP.

Parolees who are required to register as a sex offender pursuant to the provisions of PC sections 290 through 290.023 and parolees subject to supervision via Global Positioning System monitoring as provided in section 3560 are prohibited from RCP participation. This provision is necessary because these parolees require enhanced supervision, and therefore require more time and resources on the part of the parole agents assigned to their cases. For that reason, the ratio of sex offender/GPS parolees to parole agents is kept as low as possible. The additional workload on the part of these parole agents required to incorporate the provisions of the RCP would be overly burdensome and would pose labor concerns.

Parolees subject to non-revocable parole pursuant to section 3505 are excluded. Subsection 3505(b) specifies that the CDCR is not required to provide services or programs for parolees on non-revocable parole.

Additional text specifies that the participating RCP county may establish their own exclusionary criteria, pursuant to PC section 3015(d)(1).

### **Section 3769.3. Participation in the Reentry Court Program.**

**Subsection 3769.3(a)** makes specific the provisions of PC section 3015(d) by establishing the processes by which parolees eligible under section 3769.1 and not ineligible under section 3769.2 may be referred to participate in the RCP.

**Subsection 3769.3(a)(1)** establishes that parolees under the dual jurisdiction of the CDCR and a local probation office, or who are facing new criminal charges that may result in a return to prison, may be offered the choice to participate in the RCP. The

reentry court judge shall have the discretion to determine if the parolee will be admitted into the program, pursuant to PC section 3015(d)(1).

**Subsection 3769.3(a)(2)** establishes that parolees who commit a violation of parole that is referred to the Board of Parole Hearings (BPH) may be referred to the RCP by a Deputy Commissioner of the BPH. This subsection also specifies that the Parole Violation Decision Making Instrument, pursuant to the provisions of sections 3768 through 3768.3, shall be utilized by the BPH to determine appropriate sanctions.

**Subsections 3769.3(a)(3)-(a)(3)(B)** establish that parolees who commit a violation of parole which is adjudicated at the parole unit level may be referred to the RCP by the parole agent. Parole violations adjudicated at the parole unit level are those violations that are not subject to a mandatory referral to BPH pursuant to section 2616. Text also provides that parolees referred to the RCP under this subsection shall waive the right to a parole revocation hearing by signing a CDCR Form 1420 (Rev. 08/10), Placement Acknowledgement Waiver, which is incorporated by reference. This form has been made available for public review. The use of this waiver is required because no person on parole shall be placed in a residential substance abuse RCP against his or her will. Such placement shall require a hearing to be conducted by the BPH, unless the hearing is waived by the parolee. Parolees referred to the RCP under this subsection must also sign the CDCR Form 1515-RCP (12/10), Reentry Court Program Special Conditions of Parole, which is incorporated by reference. This is a new form which provides an overview of the RCP, the reason(s) for referral of the parolee to the program, and information about the reporting dates and location of the program. This form has been made available for public review.

#### **Section 3769.4. Parole Agent Responsibilities - Reentry Court Program.**

**Subsections 3769.4(a)-(a)(4)** establish that the reentry parole agent will work as part of the RCP team. The terms “reentry parole agent” and “reentry court program (RCP) team” are defined in subsection 3769(c). The subsection specifies that the reentry parole agent will attend RCP team meetings at least once per week, present referral packets to the RCP team for review, obtain any parole casework information requested by the RCP team and act as a liaison between the reentry court and the CDCR. This is necessary to define and make clear the duties and responsibilities of those parole agents assigned to the program.

#### **Section 3769.5. Processing Violations of Parole – Reentry Court Program.**

**Subsection 3769.5(a)** establishes that any new violation of parole on the part of a RCP participant will be reported to the RCP using the Parole Violation Decision Making Instrument (PVDMI), in accordance with the provisions of section 3768.3. Per subsection 3768.2(a)(5), the PVDMI, normally utilized both for reporting and assessment of parole violations, will be used only to transmit the violation information to the RCP. The RCP will determine a sanction, or remove the parolee from the program and allow the violation to proceed in accordance with section 3768.

The subsection further specifies that the authority to place a parole hold on an alleged parole violator shall be retained by the Department. This provision is necessary because PC subsection 3015(d)(2) specifies that once a parolee is admitted into the RCP, only the court may lift a parole hold. This subsection makes clear that the Department retains the right to place such holds.

**Subsection 3769.5(b)** establishes that the reentry parole agent will submit a summary of charges for any new violation of parole on the part of an RCP participant to the reentry court judge. This provision is necessary to make clear the duties and responsibilities of parole agents assigned to the program when/if RCP participants commit new parole violations. The subsection establishes a timeframe of two business days within which the reentry parole agent will coordinate with the reentry court judge to determine whether the parolee shall remain in, or be terminated from, the RCP. The two day threshold was established as a result of a Settlement Agreement, in the case of *Valdivia v. Schwarzenegger*, E.D. Cal. No. Civ. S-94-0671 LKK/GGH. The lawsuit resulted in a federal court order called the “Stipulated Order for Permanent Injunctive Relief (Permanent Injunction).”

#### **Section 3769.6. Processing Absconders from Parole – Reentry Court Program.**

**Subsection 3769.6(a)** establishes that in the event of an RCP participant absconding from parole, the violation of parole shall be reported to the BPH, who will process the case pursuant to the provisions of sections 2711 and 2731. This is necessary to establish that cases of parolees absconding from the RCP shall be handled under the same existing processes as non-RCP parole absconders.

**Subsection 3769.6(b)** establishes that an absconding parolee who has been located shall be detained in a county jail pending his/her appearance before the RCP judge on the absconding charge. This provision is necessary to make specific the disposition of an absconding parolee case.

**Subsection 3769.6(c)** establishes that in cases in which the absconder's parole has been suspended by the BPH, the Reentry Parole Agent shall, once the absconder is in custody, initiate the process to reinstate parole pursuant to section 2731. It is necessary to reinstate parole in order for the parolee to continue in the RCP. PC section 3015 gives the Reentry Court exclusive authority to terminate a parolee's participation in the RCP.

**Subsection 3769(d)** establishes that the Reentry Court Judge has exclusive authority to hear and adjudicate the absconding charge pursuant to PC section 3015. The text further establishes that if the judge chooses to terminate the parolee's participation in the RCP, the BPH retains the authority to adjudicate the charge. This provision is necessary because PC section 3015 gives exclusive authority for the oversight of RCP parolees to the Reentry Court Judge. This subsection makes explicit that the BPH retains its existing authority for the oversight of parolees not participating in the RCP.

**PUBLIC HEARING COMMENTS:**

**A public hearing was held on June 28, 2011 at 10:00 a.m.**

No comments were received at the hearing.

**SUMMARIES AND RESPONSES TO WRITTEN PUBLIC COMMENTS:**

No written comments were received.